

## Department of Energy

## § 1017.4

### Subpart F—Violations

1017.29 Civil penalty.  
1017.30 Criminal penalty.

AUTHORITY: 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 42 U.S.C. 2168; 28 U.S.C. 2461.

SOURCE: 73 FR 32641, June 10, 2008, unless otherwise noted.

### Subpart A—General Overview

#### § 1017.1 Purpose and scope.

(a) This part implements section 148 of the Atomic Energy Act (42 U.S.C. 2168) which prohibits the unauthorized dissemination of certain unclassified Government information. This information identified by the term “Unclassified Controlled Nuclear Information” (UCNI) consists of certain design and security information concerning nuclear facilities, nuclear materials, and nuclear weapons.

(b) This part:

(1) Provides for the review of information prior to its designation as UCNI;

(2) Describes how information is determined to be UCNI;

(3) Establishes minimum physical protection standards for documents and material containing UCNI;

(4) Specifies who may have access to UCNI; and,

(5) Establishes a procedure for the imposition of penalties on persons who violate section 148 of the Atomic Energy Act or any regulation or order of the Secretary issued under section 148 of the Atomic Energy Act, including this part.

(c) This part does not apply to information controlled under 10 U.S.C. 128 by the Department of Defense.

#### § 1017.2 Applicability.

This part applies to any person who is or was authorized access to UCNI, requires authorized access to UCNI, or attempts to gain or gains unauthorized access to UCNI.

#### § 1017.3 Policy.

The Department of Energy (DOE) strives to make information publicly available to the fullest extent possible. Therefore, this part must be interpreted and implemented to apply the minimum restrictions needed to pro-

tect the health and safety of the public or the common defense and security consistent with the requirement in section 148 of the Atomic Energy Act to prohibit the unauthorized dissemination of UCNI.

#### § 1017.4 Definitions.

As used in this part:

*Atomic Energy Act* means the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*).

*Atomic energy defense programs* means Government activities, equipment, and facilities that are capable of:

(1) Developing, producing, testing, sampling, maintaining, repairing, modifying, assembling or disassembling, using, transporting, or retiring nuclear weapons or components of nuclear weapons; or

(2) Producing, using, or transporting nuclear material that could be used in nuclear weapons or military-related utilization facilities.

*Authorized Individual* means a person who has routine access to UCNI under § 1017.20.

*Component* means any operational, experimental, or research-related part, subsection, design, or material used in the manufacture or utilization of a nuclear weapon, nuclear explosive device, or nuclear weapon test assembly.

*Denying Official* means a DOE official designated under 10 CFR 1004.2(b) who is authorized to deny a request for unclassified information that is exempt from release when requested under the Freedom of Information Act (FOIA).

*Director* means the DOE Official, or his or her designee, to whom the Secretary has assigned responsibility for enforcement of this part.

*Document* means the physical medium on or in which information is recorded, regardless of its physical form or characteristics.

*DOE* means the United States Department of Energy, including the National Nuclear Security Administration (NNSA).

*Essential technology-related information* means technical information whose unauthorized dissemination could significantly increase the likelihood of the illegal production of a nuclear weapon.

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*Exploitable security-related information* means information whose unauthorized dissemination could significantly increase the likelihood of the theft, diversion, or sabotage of nuclear material, equipment, or facilities.

*Government* means the Executive Branch of the United States Government.

*Government information* means any fact or concept, regardless of its physical form or characteristics, that is owned by, produced by or for, or otherwise controlled by the United States Government, including such facts or concepts that are provided by the Government to any person, including persons who are not employees of the Government.

*Guidance* means detailed written instructions that describe decisions made by the Secretary or his/her designee issued under Subpart B of these regulations concerning what specific information is UCNI.

*Illegal production* means the production or manufacture of a nuclear weapon in violation of either domestic (e.g., the Atomic Energy Act) or international (e.g., the Treaty on the Non-Proliferation of Nuclear Weapons) law.

*In transit* means the physical movement of a nuclear weapon, a component of a nuclear weapon containing nuclear material, or nuclear material from one part to another part of a facility or from one facility to another facility. An item is considered “in transit” until it has been relinquished to the custody of the authorized recipient and is in storage at its ultimate destination. An item in temporary storage pending shipment to its ultimate destination is “in transit.”

*Limited access* means access to specific UCNI granted by the cognizant DOE Program Secretarial Officer or a Deputy or Associate Administrator of the NNSA to an individual not eligible for routine access (see § 1017.21).

*Material* means a product (e.g., a part or a machine) or substance (e.g., a compound or an alloy), regardless of its physical form or characteristics.

*Need to know* means a determination made by an Authorized Individual that a person requires access to specific UCNI to perform official duties or

other Government-authorized activities.

*Nuclear material* means special nuclear material, byproduct material, or source material as defined by sections 11.aa., 11.e., and 11.z., respectively, of the Atomic Energy Act (42 U.S.C. 2014 aa., e., and z), or any other material used in the production, testing, utilization, or assembly of nuclear weapons or components of nuclear weapons that the Secretary determines to be nuclear material under § 1017.9(a).

*Nuclear weapon* means atomic weapon as defined in section 11.d. of the Atomic Energy Act (42 U.S.C. 2014 d).

*Person* means any person as defined in section 11.s. of the Atomic Energy Act (42 U.S.C. 2014 s) or any affiliate or parent corporation thereof.

*Production facility* means:

(1) Any equipment or device capable of producing special nuclear material in such quantity as to be of significance to the common defense and security or in such manner as to affect the health and safety of the public; or

(2) Any important component part especially designed for such equipment or device.

(3) For the purposes of this part, equipment and devices described in paragraphs (1) and (2) of this definition include only:

(i) Government uranium isotope enrichment equipment or devices and any other uranium isotope enrichment equipment or devices that use related technology provided by the Government; or

(ii) Government plutonium production reactors, isotope enrichment equipment or devices, and separation and purification equipment or devices and other such equipment or devices that use related technology provided by the Government.

*Reviewing Official* means an individual authorized under § 1017.14(a) to make a determination, based on guidance, that a document or material contains UCNI.

*Routine access* means access to UCNI granted by an Authorized Individual to an individual eligible to receive UCNI under § 1017.20 in order to perform official duties or other Government-authorized activities.

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*Secretary* means the Secretary of Energy.

*Special nuclear material* means:

(1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which DOE or the Nuclear Regulatory Commission, pursuant to the provisions of section 51 of the Atomic Energy Act (42 U.S.C. 2071), determines to be special nuclear material, but does not include source material; or

(2) Any material artificially enriched by any of the foregoing, but does not include source material.

*Unauthorized dissemination* means the intentional or negligent transfer of UCNI to any person other than an Authorized Individual or a person granted limited access to UCNI under § 1017.21.

*Unclassified Controlled Nuclear Information or UCNI* means certain unclassified Government information concerning nuclear facilities, materials, weapons, and components whose dissemination is controlled under section 148 of the Atomic Energy Act and this part.

*Utilization facility* means:

(1) Any equipment or device, or any important component part especially designed for such equipment or device, except for a nuclear weapon, that is capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security or in such manner as to affect the health and safety of the public. For the purposes of this part, such equipment or devices include only Government equipment or devices that use special nuclear material in the research, development, production, or testing of nuclear weapons, nuclear weapon components, or nuclear material capable of being used in nuclear weapons; or

(2) Any equipment or device, or any important component part especially designed for such equipment or device, except for a nuclear weapon, that is peculiarly adapted for making use of nuclear energy in such quantity as to be of significance to the common defense and security or in such manner as to affect the health and safety of the public. For the purposes of this part, such equipment or devices include only:

(i) Naval propulsion reactors;

(ii) Military reactors and power sources that use special nuclear material;

(iii) Tritium production reactors; and,

(iv) Government research reactors.

### § 1017.5 Requesting a deviation.

(a) Any person may request a deviation, or condition that diverges from the norm and that is categorized as:

(1) A variance (i.e., an approved condition that technically varies from a requirement in these regulations);

(2) A waiver (i.e., an approved non-standard condition that deviates from a requirement in these regulations and which, if uncompensated, would create a potential or real vulnerability); or

(3) An exception (i.e., an approved deviation from a requirement in these regulations for which DOE accepts the risk of a safeguards and security vulnerability) according to the degree of risk involved.

(b) In writing, the person must:

(1) Identify the specific requirement for which the deviation is being requested;

(2) Explain why the deviation is needed; and,

(3) If appropriate, describe the alternate or equivalent means for meeting the requirement.

(c) DOE employees must submit such requests according to internal directives. DOE contractors must submit such requests according to directives incorporated into their contracts. Other individuals must submit such requests to the Office of Classification, Office of Health, Safety and Security, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585-1290. The Office of Classification's decision must be made within 30 days.

### Subpart B—Initially Determining What Information Is Unclassified Controlled Nuclear Information

#### § 1017.6 Authority.

The Secretary, or his or her designee, determines whether information is UCNI. These determinations are incorporated into guidance that each Reviewing Official and Denying Official